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*Attorneys for Plaintiff
Peleus Insurance Company
fka Colony National Insurance Company*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

PELEUS INSURANCE COMPANY fka
COLONY NATIONAL INSURANCE
COMPANY,

Plaintiff,

vs.

ATAIN SPECIALTY INSURANCE
COMPANY; and DOES 1 through 20, inclusive,

Defendants

Case No. 2:18-cv-00064-JAD-GWF

FIRST AMENDED COMPLAINT

Plaintiff PELEUS INSURANCE COMPANY fka COLONY NATIONAL INSURANCE COMPANY ("Colony") hereby complains against Defendants ATAIN SPECIALTY INSURANCE COMPANY ("Atain"); and DOES 1 through 10, inclusive and each of them.

1 PARTIES

2 1. Colony is a corporation licensed to do business and doing business at all relevant times herein
3 as a liability insurer in the State of Nevada.

4 2. Colony alleges on information and belief that Atain is a corporation licensed to do business and
5 doing business at all relevant times herein as a liability insurer in the State of Nevada.

6 3. Colony alleges on information and belief that DOES 1 through 20 are insurers licensed to do
7 business and doing business in the State of Nevada who also owe defense and/or indemnity to Quality
8 Wood Product, Ltd. ("Quality") and the additional insureds covered under their policies for the lawsuits
9 listed below, but have failed and/or refused to provide a defense and/or indemnify Quality and/or any
10 additional insureds covered under their policies. The true names and capacities, whether individual,
11 corporate, associate or otherwise, of the Defendants named herein as DOES 1 through 20 are unknown
12 to Colony at this time; and for that reason, Colony sues Doe Defendants by fictitious names. Colony will
13 seek leave to amend this Complaint to allege the true names and capacities of said Doe Defendants when
14 they have been ascertained.

15 JURISDICTION AND VENUE

16 4. This action for declaratory relief, equitable contribution, and equitable indemnity is brought
17 pursuant to NRCP 57 and NRS Chapter 30, and the common law. This Court has jurisdiction over this
18 action as all Defendants are, and were at all relevant times, doing business in the State of Nevada
19 including, without limitation, conducting business as insurers in the State of Nevada.

20 5. The acts and/or omissions at issue in this litigation took place in this judicial district within the
21 State of Nevada. The Actions listed below are pending in this judicial district. Venue, therefore, lies with
22 this Court, as a substantial part of the events which are the subject of the claims asserted herein are
23 located and/or took place in this judicial district.

24 THE ACTIONS

25 6. Colony sues Atain for their refusal to defend and indemnify their named insured, Quality, and
26 the additional insureds covered under each of their policies as they relate to defense and settlement of
27 the following underlying actions:
28

- 1 • *Aaronson et al. v. U.S. Home Corporation, et al.* Clark County, District Court of
2 Nevada Case No.: A-12-669867-D
- 3 • *Amedemegnah, et al. v. U.S. Home Corporation, et al.;*
4 *Saddle Ridge II Claimants v. U.S. Home Corporation, et al.* Clark County District
5 Court Case No.: A-16-732225-D
- 6 • *Aton, et al. v. Horton, Inc., et al.,* Clark County District Court Case No.: A732221
- 7 • *Attaway v. D.R. Horton, Inc.* Clark County District Court Case No.: A-14-711032-D
- 8 • *Azure Manor/Rancho De Paz HOA. v. D.R. Horton, Inc.* Clark County, District Court
9 of Nevada Case No.: A-14-710406-D
- 10 • *Beckmann, et al. v. D.R. Horton, Inc.* District Court of Nevada, Clark County Case
11 No.: A-14-740444-D
- 12 • *Chamelian, et al. v. US Home Corp, et al.* Clark County, District Court of Nevada
13 Case No.: A-16-732230-D
- 14 • *Corpuz v. Centex Homes,* Clark County District Court, Chapter 40
- 15 • *Frey, et al. v. D.R. Horton, Inc., et al* Clark County, District Court of Nevada Case
16 No.: A-14-711601-D
- 17 • *Heck, et al. v. D.R. Horton, Inc., et al.* Clark County, District Court of Nevada Case
18 No.: A-16-732295-D
- 19 • *High Noon @ Arlington Ranch HOA v. Horton, Inc., et al.* Clark County, District
20 Court of Nevada Case No.: A-542616
- 21 • *Jackson (Riverwalk) v. D.R. Horton, Inc.,* Clark County District Court Case No.:
22 A745312
- 23 • *JFB Trust, et. al. v D.R. Horton, Inc.* Clark County, District Court of Nevada Case
24 No.: A-16 732223-D
- 25 • *Knox/Henning, et al. v. D.R. Horton, Inc., et al.* Clark County, District Court of
26 Nevada Case No.: A-15-714624-D
- 27 • *Lopez, et al. v. US Home Corporation, et al.* Clark County, District Court of Nevada
28 Case No. 2:16 CV-01754-GMV-CWH
- *Medina, et al. v. US Home Corporation, et al.* Clark County, District Court of Nevada
Case No.: A-12-668349-D
- *Munsell et al. v. Beazer Homes Holdings Corp* Clark County, District Court of Nevada
Case No.: A-12-661755-D
- *Nguyen v. D. R. Horton, Inc. (Arlington Estates),* Clark County District Court Case
No.: A-16-732129-D
- *Paradise Court HOA v. D.R. Horton* District Court, Clark County, Nevada Case No.
A-16-1731709-C

- 1 • *Raubolt v. US Home Corporation, et al.* Clark County District Court Case No.: A-15-727599-D
- 2
- 3 • *Reynard, et al. v. US Home Corp, et al.;Chamelian, et al. v. US Home Corp, et al.* A-15-713588-D

4 The above listed claims will be collectively referred to as "Actions".

5 POLICIES

6 7. Colony issued to Quality two Commercial General Liability Insurance Policies, Policy No.
7 AR5360488, effective May 15, 2007 to February 20, 2008 and Policy No AR53602488A, effective
8 February 20, 2008 to February 20, 2009 (the "Colony Policies").

9 8. On information and belief, Atain issued to Colony a Commercial General Liability Insurance
10 to Quality, Policy No. PRB1273 effective February 20, 2006 to February 20, 2007 (the "Atain Policy").

11 9. On information and belief, the Atain Policy at issue provides coverage for sums the insured is
12 obligated to pay because of "bodily injury" or "property damage" caused by an "occurrence" in which
13 "property damage" means "physical injury to tangible property, including all resulting loss of use of
14 that property" and "occurrence" means "an accident, including continuous or repeated exposure to
15 substantially the same general harmful conditions." On information and belief Colony's policies and
16 Defendants' policies listed above contain additional insured endorsements applicable to the above
17 referenced Actions.

18 DEFENSE AND INDEMNITY OF QUALITY

19 10. The above Actions were tendered to Colony and Defendants for defense and indemnity.
20 Colony agreed to defend Quality under the Colony Policies subject to a comprehensive reservation of
21 rights letter.

22 11. On information and belief, Atain refused to provide a defense to Quality in all of the Actions.

23 12. On information and belief, Colony asserts that Defendants wrongfully refused to and continue
24 to wrongfully refuse to pay the defense and indemnity on behalf of Quality under their respective
25 policies.

26 13. Each one of the Actions cited above involves construction defect claims allegedly arising out
27 of Quality's work. Each Complaint in the above referenced Action alleges that the damages to the
28

1 Properties occurred at various times, thereby triggering a defense obligation under the Atain Policy and
2 the Doe Defendants' policies issued to Quality.

3 14. Colony has incurred in excess of \$450,000 in defense of Quality. Colony has incurred in
4 excess of \$400,000 in settlement of claims on behalf of Quality.

5 DEFENSE OF ADDITIONAL INSURED

6 15. The above Actions were tendered to Colony and Atain for defense and indemnity under
7 Atain's policies. Colony agreed to defend some but not all of the additional insured defendants in the
8 Actions subject to a comprehensive reservation of rights letter.

9 16. On information and belief, Atain and the Doe Defendants refused to provide a defense to any
10 additional insureds in most, if not all, cases.

11 17. On information and belief, Colony asserts that Atain and the Doe Defendants wrongfully
12 refused to and continue to wrongfully refuse to pay defense and indemnity on behalf of the additional
13 insureds covered under their respective policies.

14 18. Each one of the Actions cited above involves construction defect claims allegedly arising out
15 of Quality's work. Each Complaint in the underlying actions alleges that the damages to the Properties
16 occurred at various times, thereby triggering a defense obligation under each of the Defendants'
17 respective policies.

18 19. To date, Colony has paid in excess of \$600,000 in defense of the additional insureds.

19 FIRST CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION
20 AS TO DUTY TO DEFEND QUALITY

21 20. Colony reinstates and incorporates by reference the allegations contained in the prior
22 paragraphs of this Complaint as though fully set forth herein.

23 21. Colony has incurred and continues to incur substantial monetary sums defending Quality in
24 the above listed Actions.

25 22. Colony asserts and contends that Quality was insured under Defendants' Policies. Pursuant to
26 the express and implied terms, conditions and provisions of Atain's Policies, Atain and the Doe
27 Defendants were obligated to defend Quality against the claims, allegations, actions and/or demands
28 made against Quality in the above referenced Actions.

23. Colony asserts and contends that Atain and the doe Defendants wrongfully refused to defend Quality against the claims, allegations, actions and/or demands made against Quality in the above referenced Actions under their respective policies and continue to wrongfully refuse to defend Quality.

24. Accordingly, under the law and doctrine of equitable contribution, Colony is entitled to contribution from Atain and the Doe Defendants for their equitable share of the sums expended by Colony to defend Quality against the claims, allegations, actions and/or demands made against Quality in the Actions.

25. Colony asserts and contends that Atain and the Doe Defendants are obligated to reimburse Colony for its proportionate or equitable share of the sums expended by Colony to defend Quality against the claims, allegations, actions and/or demands made against Quality in the above Actions.

26. By reason of the wrongful refusal of Atain and the Doe Defendants to defend Quality against the claims, allegations, actions and/or demands made to or against Quality in the above referenced Actions, Atain and the Doe Defendants have damaged Colony and are liable to Colony for its proportionate or equitable share of the monetary sums expended by Colony to defend Quality against the claims, allegations, actions and/or demands made against Quality in the above referenced Actions, or alternatively, for Atain and the Doe Defendants' proportionate or equitable share of those monetary sums.

WHEREFORE, Colony prays for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION AS TO DUTY TO
INDEMNIFY QUALITY

27. Colony reinstates and incorporates by reference the allegations contained in the prior paragraphs of this First Amended Complaint as though fully set forth herein.

28. Colony incurred and/or will incur substantial monetary sums indemnifying against the claims, allegations, actions and/or demands made to and/or against Quality in the above referenced Actions.

29. Colony asserts and contends that Quality was insured under one or more of Defendants' Policies issued. Pursuant to the express and implied terms, conditions and provisions of Defendants' Policies, Defendants are to fully indemnify Quality against the claims, allegations, actions and/or demands made to and/or against Quality in the above referenced Actions.

1 30. Colony asserts and contends that Defendants wrongfully refused and/or failed to fully
2 indemnify Quality under Defendants' Policies against the claims, allegations, actions and/or demands
3 made against Quality in the above referenced Actions.

4 31. Accordingly, under the law and doctrine of equitable contribution, Colony is entitled to
5 contribution from Defendants for their equitable share of sums that has been expended and will be
6 expended by Colony to indemnify Quality against the claims, allegations, actions and/or demands made
7 against Quality in the Actions.

8 32. Colony asserts and contends that Defendants are obligated to contribute its proportionate or
9 equitable share of the sums expended by Colony to indemnify Quality against the claims, allegations,
10 actions and/or demands made against Quality in the Actions.

11 33. By reason of Defendants' failure to indemnify Quality against the claims, allegations, actions
12 and/or demands made against Quality in the above referenced Actions, Defendants have damaged
13 Colony and are liable to Colony for its proportionate share of the monetary sums expended by Colony
14 to fully indemnify Quality against the claims, allegations, actions and/or demands made against Quality
15 in the Actions.

16 WHEREFORE, Colony prays for judgment as hereinafter set forth.

17 THIRD CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION
18 AS TO DUTY TO DEFEND ADDITIONAL INSURED

19 34. Colony reinstates and incorporates by reference the allegations contained in the prior
20 paragraphs of this First Amended Complaint as though fully set forth herein.

21 35. Colony has incurred and continues to incur substantial monetary sums defending some of the
22 additional insureds in the above referenced Actions.

23 36. Colony asserts and contends that the additional insureds were insured under Defendants'
24 Policies. Pursuant to the express and implied terms, conditions and provisions of Defendants Policies,
25 Defendants as obligated to defend the additional insureds against the claims, allegations, actions and/or
26 demands made against the additional insureds in the above referenced Actions.

27 37. Colony asserts and contends that Defendants wrongfully refused to defend the additional
28 insureds against the claims, allegations, actions and/or demands made against the additional insureds in

1 the above referenced Actions under the their respective policies and continue to wrongfully refuse to
2 defend Quality.

3 38. Accordingly, under the law and doctrine of equitable contribution, Colony is entitled to
4 contribution from Defendants for its equitable share of the sums expended or to be expended by Colony
5 to defend the additional insureds against the claims, allegations, actions and/or demands made against
6 the additional insureds in the above referenced Actions.

7 39. Colony asserts and contends that Defendants are obligated to reimburse Colony for their
8 proportionate or equitable shares of the sums expended by Colony to defend the additional insureds
9 against the claims, allegations, actions and/or demands made against the additional insureds in the
10 above referenced Actions.

11 40. By reason of Defendants' wrongful refusal to defend the additional insureds against the
12 claims, allegations, actions and/or demands made to or against the additional insureds in the above
13 referenced Actions, Defendants have damaged Colony and are liable to Colony for Defendants'
14 proportionate or equitable share of those monetary sums expended by Colony to defend the additional
15 insureds against the claims, allegations, actions and/or demands made against the additional insureds in
16 the above referenced Actions, or alternatively, for Defendants' proportionate or equitable share of
17 those monetary sums.

18 WHEREFORE, Colony prays for judgment as hereinafter set forth.

19 FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF
20 AS TO DUTY TO DEFEND QUALITY

21 41. Colony reinstates and incorporates by reference the allegations contained in the prior
22 paragraphs of this First Amended Complaint as though fully set forth herein.

23 42. Quality's defense against the claims, allegations, actions and demands alleged against Quality
24 in the above referenced Actions were tendered to Atain and the Doe Defendants. It was requested that
25 Atain and the Doe Defendants defend Quality pursuant to its obligations under their Policies. Atain and
26 the Doe Defendants wrongfully refused to defend Quality, and wrongfully continue to refuse to defend
27 Quality in the above referenced Actions under one or more of their policies.
28

43. Colony has sustained substantial pecuniary loss defending Quality against the claims, actions and demands alleged against Quality in the above referenced Actions.

44. An actual, present and justiciable controversy has arisen and now exists between Colony and Atain, as well as the Doe Defendants, concerning each insurance carrier's respective rights, duties and obligations under their respective policies as follows:

- i. Colony asserts and contends that pursuant to the express and implied terms, conditions and provisions of their policies, Atain and the Doe Defendants are and were required and obligated to defend Quality against the claims, allegations, demands and causes of action alleged against them in the above referenced Actions. Colony is informed and, based thereon, alleges that Atain and the Doe Defendants have failed to defend Quality against the claims, allegations, demands and causes of action alleged against Quality in the above referenced Actions; and
- ii. Colony is informed and believes, and based thereon alleges, that Atain and the Doe Defendants deny that they have or had any defense obligation to Quality under one or more of their policies concerning the claims, allegations, demands and causes of action alleged against Quality in the above referenced Actions.

45. Colony asserts and contends that a declaratory judgment is both necessary and proper at this time for the court to determine the respective rights and liabilities of Colony and Defendants regarding their respective obligations to defend Quality against the claims, allegations, demands and causes of action alleged against Quality in the above referenced Actions.

46. An actual, present and justiciable controversy has arisen between Colony and Defendants regarding their respective defense obligations and duties, if any, owed to Quality under one or more of their policies, and to each other, with respect to the Actions.

47. By reason of the foregoing, a declaratory judgment is both necessary and proper at this time in order for Colony and Defendants to determine their respective rights, duties and obligations, if any,

1 owed to Quality, and to each other, pursuant to the express and implied terms, conditions and
2 provisions of their respective policies.

3 WHEREFORE, Colony prays for judgment as hereinafter set forth.

4 FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF AS TO DUTY TO
5 INDEMNIFY QUALITY

6 48. Colony reinstates and incorporates by reference the allegations contained in the prior
7 paragraphs of this First Amended Complaint as though fully set forth herein.

8 49. Quality's defense against the claims, allegations, actions and demands alleged against
9 Quality in the above referenced Actions were tendered to Defendants. It was requested that Defendants
10 defend and indemnify Quality pursuant to their obligations under one more of the policies issued by
11 them to Quality. Defendants have refused to indemnify Quality in the above referenced Actions under
12 one or more of Defendants' Policies, respectively.

13 50. An actual, present and justiciable controversy has arisen and now exists between Colony and
14 Defendants concerning each insurance carrier's respective rights, duties and obligations under their
15 respective policies as follows:

- 16 i. Colony asserts and contends that pursuant to the express
17 and implied terms, conditions and provisions of their policies, Defendants
18 are required and obligated to indemnify Quality against the claims,
19 allegations, demands and causes of action alleged against them in the
20 Actions. Colony is informed and, based thereon, alleges that based on
21 Defendants' present denial of a defense under one or more of their
22 respective policies, Defendants will fail to indemnify Quality against the
23 claims, allegations, demands and causes of action alleged against Quality
24 in the Actions; and
- 25 ii. Colony is informed and believes, and based thereon alleges, that
26 Defendants deny that they have or had any defense or indemnity
27 obligation to Quality under one or more of their respective policies
28

concerning the claims, allegations, demands and causes of action alleged
against Quality in the Actions.

51. Colony has sustained and will sustain substantial pecuniary loss indemnifying Quality against
the claims, actions and demands alleged against Quality in the above referenced Actions.

52. Colony asserts and contends that a declaratory judgment is both necessary and proper at this
time for the court to determine the respective rights and liabilities of Colony and Defendants regarding
their respective obligations to indemnify Quality against the claims, allegations, demands and causes of
action alleged against Quality in the Actions.

53. An actual, present and justiciable controversy has arisen between Colony and Defendants
regarding their respective indemnity obligations and duties, if any, owed to Quality and to each other
with respect to the Actions.

54. By reason of the foregoing, a declaratory judgment is both necessary and proper at this time in
order for Colony and Defendants to determine their respective rights, duties and obligations, if any,
owed to Quality and to each other, pursuant to the express and implied terms, conditions and provisions
of their respective policies.

WHEREFORE, Colony prays for judgment as hereinafter set forth.

SIXTH CAUSE OF ACTION FOR DECLARATORY RELIEF
AS TO DUTY TO DEFEND ADDITIONAL INSURED

55. Colony reinstates and incorporates by reference the allegations contained in the prior
paragraphs of this First Amended Complaint as though fully set forth herein.

56. Additional Insured's defense against the claims, allegations, actions and demands alleged
against them in the above referenced Actions was tendered to Colony and Defendants. It was requested
that Colony and Defendants defend the additional insureds pursuant to their obligations under their
Policies. Colony accepted the defense of the additional insured subject to a complete reservation of
rights. Defendants, and each of them, wrongfully refused to defend the additional insureds, and
wrongfully continue to refuse to defend the additional insureds in the above referenced Actions under
one or more of their policies.

1 57. Colony has sustained substantial pecuniary loss defending the additional insureds against the
2 claims, actions and demands alleged against the additional insureds in the Actions.

3 58. An actual, present and justiciable controversy has arisen and now exists between Colony and
4 Defendants concerning each insurance carrier's respective rights, duties and obligations under their
5 respective policies as follows:

6 i. Colony asserts and contends that pursuant to the express and implied
7 terms, conditions and provisions of their policies, Defendants are and were
8 required and obligated to defend the additional insureds against the claims,
9 allegations, demands and causes of action alleged against them in the
10 above referenced Actions. Colony is informed and, based thereon, alleges
11 that Defendants have failed to defend the additional insureds against the
12 claims, allegations, demands and causes of action alleged against the
13 additional insureds in the Actions; and

14 ii. Colony is informed and believes, and based thereon alleges, that
15 Defendants deny that they have or had any defense obligation to the
16 additional insureds under one or more of their policies concerning the
17 claims, allegations, demands and causes of action alleged against the
18 Additional Insureds in the Actions.

19 59. Colony asserts and contends that a declaratory judgment is both necessary and proper at this
20 time for the court to determine the respective rights and liabilities of Colony and Defendants regarding
21 their respective obligations to defend the Additional Insureds against the claims, allegations, demands
22 and causes of action alleged against the Additional Insureds in the Actions.

23 60. An actual, present and justiciable controversy has arisen between Colony and Defendants
24 regarding their respective defense obligations and duties, if any, owed to the Additional Insureds under
25 one or more of their policies, and to each other, with respect to the above referenced Actions.

26 61. By reason of the foregoing, a declaratory judgment is both necessary and proper at this time in
27 order for Colony and Defendants to determine their respective rights, duties and obligations, if any,
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1 owed to the Additional Insureds, and to each other, pursuant to the express and implied terms,
2 conditions and provisions of their respective policies.

3 WHEREFORE, Colony prays for judgment as hereinafter set forth.

4 PRAYER FOR RELIEF

5 WHEREFORE, Colony prays for judgment against each Defendant as follows:

6 1. For equitable contribution from Defendants for their respective equitable and/or
7 proportionate share of all the monetary sums expended by Colony to defend Quality against the claims,
8 allegations, causes of action and/or demands made against Quality in the above referenced Actions,
9 according to proof;

10 2. For equitable contribution from Defendants for their respective equitable and/or
11 proportionate share of all the monetary sums expended by Colony to indemnify Quality against the
12 claims, allegations, causes of action and/or demands made against Quality in the above referenced
13 Actions, according to proof;

14 3. For equitable contribution from Defendants for their respective equitable and/or
15 proportionate share of all the monetary sums expended by Colony to defend the Additional Insureds
16 against the claims, allegations, causes of action and/or demands made against the Additional Insureds
17 in the above referenced Actions, according to proof;

18 4. For a declaration that Defendants have an obligation to defend Quality under each of
19 their respective policies, according to proof;

20 5. For a declaration that Defendants have an obligation to indemnify Quality under each
21 of their respective policies, according to proof;

22 6. For a declaration that Defendants have an obligation to defend the Additional Insureds
23 under each of their respective policies, according to proof;

24 7. For costs of suit and attorneys' fees and costs incurred herein;

25 8. For an award of prejudgment interest; and

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27 ///

28 ///

DATED this 15 day of February, 2018.

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